

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of)	
)	
HCR MANORCARE, RUXTON)	Case 05-RC-108090
)	
Employer)	
)	
and)	
)	
1199 SEIU UNITED HEALTH CARE)	
WORKERS EAST)	
Petitioner)	
)	

**PETITIONER’S EXCEPTIONS TO HEARING OFFICER’S REPORT
AND RECOMMENDATION ON OBJECTIONS**

Petitioner 1199 SEIU United Healthcare Workers East (“1199 SEIU” or “Union”), through its attorneys, Gladstein, Reif & Meginniss, LLP, hereby files Exceptions to the Hearing Officer’s Report and Recommendation on Objections, pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (“NLRB”).

Exception 1: The Hearing Officer erred in his finding that “The Union presented no evidence that employees were informed about the MAWA after June 25.” Hearing Officer’s Report and Recommendation on Objections (“HO Report”) at 10.

Exception 2: The Hearing Officer erred as a matter of law in overruling Objection 2 based on his finding that the Employer announced wage increases outside of the critical period. HO Report at 11.

Exception 3: The Hearing Officer erred as a matter of law in overruling Objection 2 without considering evidence that over 50% of eligible voters were informed about the wage increase post-petition. HO Report at 11.

Exception 4: The Hearing Officer erred as a matter of law in overruling Objection 2 without considering evidence that the Employer's June 25, 2013 announcement concerned only the fact that a "market" wage adjustment was forthcoming and it would be effective June 19, 2013. HO Report at 11.

Exception 5: The Hearing Officer erred as a matter of law in overruling Objection 2 without considering evidence that employees were informed of the amount of their wage increase or bonus *during* the critical period. HO Report 11.

Exception 6: The Hearing Officer erred as a matter of law in overruling Objection 2 without considering evidence that 30% of eligible voters (19 out of 65) learned that their wage increase was \$1.00 or more per hour *during* the critical period. HO Report 11.

Exception 7: The Hearing Officer erred as a matter of law in overruling Objection 2 without considering evidence that one week before the election, the Employer showed a PowerPoint presentation to all eligible voters, in which it compared employees' new wage rates with the wage rates at 199 SEIU facilities, which facilities received no "market" adjustment. HO Report at 11.

Exception 8: The Hearing Officer erred as a matter of law in overruling Objection 3 based on his finding under *Kokomo Tube Company*, 280 NLRB 357 (1986), that the Employer's payment of wage increases was not objectionable because the "effective" date of such increases fell outside of the critical period, where the evidence establishes that the Employer made the effective date retroactive with knowledge that a petition for representation was forthcoming. HO Report at 11-14.

Exception 9: The Hearing Officer erred in finding that the Employer demonstrated a history of "using a Request for MAWA as a compensation tool" and his reliance on that finding as further justification for applying *Kokomo*. HO Report at 6, 12.

Exception 10: The Hearing Officer erred as a matter of law in refusing to follow *Kingspan Insulated Panels, Inc.*, 359 NLRB No. 19, n.2 (2012), which held that pre-petition conduct may be considered "if it adds meaning and dimension to related post-petition conduct." HO Report at 13.

Exception 11: The Hearing Officer erred as a matter of law in overruling Objection 3 without considering evidence that the Employer's objective in announcing and awarding wage increases was illegitimate and unlawful. HO Report at 11-14.

Exception 12: The Hearing Officer erred as a matter of law in overruling Objection 3 without considering evidence that payment of wage increases *during* the critical period included retroactive pay. HO Report at 11-14.

Exception 13: The Hearing Officer erred as a matter of law in overruling Objection 3 without considering evidence that 12 eligible voters received a lump sum bonus instead of a wage increase *during* the critical period. HO Report at 11-14.

Exception 14: The Hearing Officer erred as a matter of law in overruling Objection 3 without considering evidence that the lump sum bonus was “effective” *during* the critical period. HO Report at 11-14.

Exception 15: The Hearing Officer erred as a matter of law in overruling Objection 3 without considering evidence that one week before the election, the Employer showed a PowerPoint presentation to all eligible voters, in which it compared employees’ new minimum wage rates with the minimum wage rates at 1199 SEIU facilities, which facilities received no market adjustment. HO Report at 11-14.

Exception 16: The Hearing Officer erred in failing to infer Employer knowledge of the Union’s citywide campaign to raise working standards for health care workers in October 2012, where past practices, policies and procedures of the Employer establish its commitment to identifying and responding to union activity in relevant labor markets—“the CEC program.” HO Report at 6.

Exception 17: The Hearing Officer erred in sustaining his own objection to the Union’s questions concerning the source of the Employer’s knowledge of employees’ plan to demand recognition. Tr. 89.

Exception 18: The Hearing Officer erred in failing to take judicial notice of the Board’s findings and conclusions in *Manor Care Health Services-Easton*, 356 NLRB No. 39, slip op. at 21 (2010). HO Report at 11-14.

Exception 19: The Hearing Officer erred as a matter of law in overruling Objections 4 and 5 without considering the context of the Employer’s wage comparison and the accompanying statements about, among other things, the “risk” of losing benefits in the event of unionization. HO Report at 17.

Exception 20: The Hearing Officer erred in failing to set the election aside and to direct a new election where the election was close, every eligible voter received a wage increase and retroactive pay or a bonus *during* the critical period, the Employer met with employees one-on-one to convey information about these benefits and reminded employees one week before the election that 1199 SEIU members at nearby facilities did not receive “market” adjustments. Under all of the circumstances of this case, the election should be set aside because the Employer’s conduct had a reasonable tendency to affect the outcome of the election.

Dated: New York, New York
February 20, 2014

Respectfully submitted,

GLADSTEIN, REIF & MEGINNISS

s/ Yvonne L. Brown
By: Yvonne L. Brown

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Healthcare Workers East

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Certificate of Service

Petitioners' Exceptions are being electronically filed today (February 20, 2014) with the Executive Secretary of the National Labor Relations Board. Copies of this submission have been served today via email on counsel for all other parties, as follows:

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/s/ Yvonne L. Brown
Yvonne L. Brown

DATED: New York, New York
February 20, 2014

